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April 18, 2013

The Honorable Sandra Feuerstein, U.S.D.C.J.
United States District Court, Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Proctor v. Cagno, et. al., Docket No: 10 CV 5981

Dear Judge Feuerstein:

This firm represents the defendants in the above referenced matter. Jury selection is scheduled to be held on April 29, 2013. The parties are in the process of preparing a pretrial order and the same should be filed on April 19, 2013.

As you will recall, plaintiff was arrested as a result of a search warrant that was processed on April 21, 2010. After the plaintiff pled guilty to all 12 counts of the indictment, he was sentenced and incarcerated in a state correctional facility. Plaintiff's conviction was dismissed about two years later, on May 25, 2012, when the District Attorney's Office moved to dismiss the indictment pursuant to Criminal Procedure Law 210.40 in the interest of justice, "because certain facts have recently come to the attention of the district attorney's office regarding a police officer who participated in the investigation of this case". This information was not disclosed to the criminal defense counsel because at the time that the plaintiff pled guilty on July 13, 2011, the parties were not aware of potential issues with this police officer.

The Honorable Sandra Feuerstein, U.S.D.C.J.
United States District Court, Eastern District of New York

April 18, 2013

Re: Proctor v. Cagno, et. al.
Docket No: 10 CV 5981

The clerk's certificate of disposition provides that same was dismissed and that the accused shall be restored to the status occupied before the arrest and prosecution pursuant to Criminal Procedure Law 160.60.

The District Attorney's Office has dismissed indictments and convictions against other criminal defendants in addition to the plaintiff herein. While there has been no indication of wrongdoing on the officer's part in this case or any other case, the failure to disclose this information apparently necessitated the motions by the prosecution.

Plaintiff's counsel recently requested that I produce a privileged and confidential report issued by a law firm hired by the Town of Southampton. Bracewell and Giuliani, LLP was retained by the town to assist the town attorney on various legal matters relating to ongoing investigations by the District Attorney concerning the Southampton Town Police Department. The purpose of the report was to provide the Board with the status of Bracewell's work, and to advise the Board on where the firm saw areas of potential concern.

I have advised plaintiff's counsel that the report is privileged and confidential and that same lacks any relevance to his client's claims. Plaintiff's counsel and I have met and conferred in an effort to resolve our differences regarding his request for disclosure of this report. Because this report constitutes an attorney-client communication, I am requesting a protective order granting an *in camera* review by this Court. In an effort to resolve this issue before trial, the plaintiff consents to my application for an *in camera* review.

In the event that this Court grants defendants' request, a hard copy of the report will be provided for this Court's review immediately upon receipt of the decision.

Respectfully submitted,

DEVITT SPELLMAN BARRETT, LLP

/S/

Jeltje deJong

Cc: Stephen R. Krawitz, Esq.
Attorney for Plaintiff
(VIA ECF)

Order

The application is:

☒ **granted**

☐ **denied**

☐ **referred to Magistrate Judge _____ for**

☐ **decision**

2 ☐ **report and recommendation**

4/19/13 /s/ Sandra J. Feuerstein

U.S.D.C.